

No. 77-265

Supreme Court, U. S.

E I L E D

OCT 6 1977

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977

DAVID B. HIGGINBOTTOM, PETITIONER

v.

**W. MICHAEL BLUMENTHAL,
SECRETARY OF THE TREASURY**

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

**MEMORANDUM FOR THE RESPONDENT
IN OPPOSITION**

**WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.**

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Petitioner filed this suit alleging that payments made by the respondent Secretary of the Treasury for such items as Camp David, the President's household and security staff, and use of public automobiles constitute "emoluments" to the President in violation of Article II, Section 1, clause 6, of the Constitution. He asked that the Secretary be ordered to make an accounting of all expenditures made on behalf of the President for the items described and that he be enjoined from further violating Article II, Section 1, clause 6, if the accounting revealed past violations (Pet. App. D 5a-8a).

The district court granted the Secretary's motion to dismiss on the ground that petitioner lacked standing

either as a citizen or as a taxpayer to maintain the action (Pet. App. 1a-2a). Petitioner appealed, asserting standing only as a citizen (Br. 14). The court of appeals affirmed (Pet. App. B 3a) and denied rehearing (Pet. App. C 4a).

The decision of the court of appeals is correct, and further review is not warranted. Petitioner reasserts his claim to standing as a citizen to bring this suit. But as the district court noted (Pet. App. 1a-2a):

Plaintiff's * * * contention * * * that his status as a citizen of the United States gives him standing to litigate the alleged constitutional violation * * * was rejected by *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 * * * in which the Supreme Court, discussing "citizen standing," held that the "generalized interest of all citizens in constitutional governance" is an insufficient basis upon which to predicate standing to sue because "concrete" injury (which "adds the essential dimension of specificity to the dispute") is an "indispensable element" of a "case or controversy," and that injury to an interest all citizens share is necessarily abstract" in nature. * * *

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

OCTOBER 1977.